



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

May 1, 2003

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Joe Ortiz
Executive Director
Colorado Department of Corrections
2862 South Circle Drive
Colorado Springs, Colorado 80906-4195

Re: Findings of Violation and Order for
Compliance under the Clean Water Act
33 U.S.C. § 309(a)

Dear Mr. Ortiz:

Enclosed is a United States Environmental Protection Agency Region VIII ("EPA") Order for Compliance ("Order") issued to the State of Colorado Department of Corrections, Sterling Correctional Facility ("SCF"). The Order specifies the nature of the violations under the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq. (the "CWA"). The authority for such action is provided to EPA under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3).

The Order describes the actions necessary in order for SCF to achieve compliance with the CWA. The Order requires you to notify EPA in writing within ten (10) days whether you intend to comply with the Order.

The CWA requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the CWA and any Orders issued thereunder. Section 309 of the CWA provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Section 508 allows for debarment from Federal contracts and/or loans for any noncompliance with the CWA or with an Order issued pursuant to the CWA (33 U.S.C. 136B).

Please be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or initiation of civil or criminal actions in the U.S. District Court under sections 309(g), (b) and (c) of the CWA for the violations cited in the Order.



Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of said Order. If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to SCF's compliance with the CWA, the most knowledgeable people on my staff regarding these matters are Elyana Sutin, Enforcement Attorney, at (303) 312-6899, and Darcy O'Connor, Technical Enforcement, at (303) 312-6392.

Sincerely,

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Dave Akers, CDPHE (w/encl.)
Gary Golder, Sterling Correctional Facility (w/encl.)
Bill Wright, City of Sterling (w/encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII**

IN THE MATTER OF:)	FINDINGS OF VIOLATION
)	AND
State of Colorado)	ORDER FOR COMPLIANCE
Department of Corrections)	
Sterling Correctional Facility)	[33 U.S.C. §1319 (a)(3)]
12101 Highway 61)	
Sterling, Colorado 80751)	Docket No. CWA-08-2003-0068

Respondent

STATUTORY AUTHORITY

This Order for Compliance (Order) is issued pursuant to section 309(a)(3) of the Clean Water Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of sections 301, 302, 306, 307, 308, 318, and/or 402 of the Act, or in violation of any permit condition or limitation implementing any such sections of the Act. This authority has been delegated to Carol Rushin, Assistant Regional Administrator for Enforcement, Compliance and Environmental Justice, EPA Region VIII, who has been duly authorized to institute this action.

FINDINGS OF FACT

1. Respondent, the State of Colorado Department of Corrections, is a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).
2. Respondent operates the Sterling Correctional Facility (the Facility) located at 12101 Highway 61, Sterling, Colorado 80751.

3. The Facility has been in operation from at least 1999 to the present.
4. The City of Sterling (City) owns and operates a publicly owned treatment works (POTW), as defined in 40 C.F.R. § 403.3(o), located in Sterling, Colorado.
5. The City has jurisdiction over disposal of sewage, industrial wastes, or other wastes and is a "municipality" within the meaning of section 502(4) of the Act, 33 U.S.C. § 1362(4), and a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2 for purposes of federal enforcement.
6. The Facility generates wastewater which is considered a "pollutant" within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
7. Wastewater from the Facility is discharged to the City's POTW and is, therefore, considered an Indirect Discharge within the meaning of 40 C.F.R. § 403.3(g). The Facility is, therefore, an Industrial User within the meaning of 40 C.F.R. § 403.3(h).
8. The City is authorized and regulated to discharge treated wastewater into the South Platte River by Colorado Discharge Permit System (CDPS) permit number CO-0026247 issued by the State of Colorado on March 16, 1998 in accordance with section 402 of the Act, 33 U.S.C. § 1342.
9. The South Platte River is a "water of the United States" within the meaning of 40 C.F.R. § 122.2 and, therefore, a "navigable water" within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).
10. Section 307(b) of the Act, 33 U.S.C. § 1317(b), directs the Administrator of EPA to establish Pretreatment Standards applicable to the introduction of pollutants into treatment works to control those pollutants that are determined not to be susceptible to

treatment by a POTW or which would interfere with the operation of such POTW; these standards are promulgated at 40 C.F.R. part 403.

11. The General Pretreatment Regulations, at 40 C.F.R. § 403.8(a), provide that “[A]ny POTW with a total design flow greater than five (5) million gallons per day (MGD) and receiving from industrial users pollutants which Pass Through or Interfere with the operation of the POTW or are otherwise subject to Pretreatment Standards will be required to establish a POTW Pretreatment Program” unless the NPDES State otherwise assumes the responsibility. The Regional Administrator or Director may require that a POTW with a design flow of 5 MGD or less develop a Pretreatment Program if the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant.
12. Any such POTW Pretreatment Program must receive EPA approval pursuant to 40 C.F.R. § 403.8(b). Upon its approval by EPA, the responsibility to apply and enforce the National Pretreatment Standards transfers to the POTW.
13. At all times relevant to this Order, EPA has been and continues to be the “Approval Authority” within the meaning of 40 C.F.R. § 403.3(c).
14. EPA approved the City’s POTW Pretreatment Program on April 4, 1985, at which time the City became the “Control Authority” within the meaning of 40 C.F.R. § 403.12(a).
15. Pursuant to 40 C.F.R. § 403.5(c) of the General Pretreatment Regulations and referenced by 40 C.F.R. § 403.8(f)(4), “Each POTW developing a POTW Pretreatment Program shall develop and enforce specific limits to implement the prohibitions listed in paragraphs (a)(1) and (b) of this section. Each POTW with an approved pretreatment

program shall continue to develop these limits as necessary and effectively enforce such limits.”

16. EPA approved the City’s technically-developed local limits on January 29, 1996. The technically-developed local limits include, but are not limited to, daily loading requirements for Industrial Users and Significant Industrial Users for Five Day Biochemical Oxygen Demand (“BOD₅”), Total Suspended Solids (“TSS”), ammonia, and oil and grease.
17. Respondent has been designated as a “Significant Industrial User” within the meaning of 40 C.F.R. § 403.3(t).
18. The City issued an industrial user permit to Respondent on May 28, 1999 which established the following discharge limits effective June 1, 1999:

Parameter	Daily Maximum	7-Day Maximum Average
Flow	0.20 MGD	0.14 MGD
Chemical Oxygen Demand (COD)	1570 milligrams/Liter (mg/L) 262 pounds/day (lb/day)	1120 mg/L/ 1308 lb/day
BOD ₅	560 mg/L / 934 lb/day	400 mg/L / 467 lb/day
Chloride	6773 lb/day	N/A
TSS	644 mg/l / 1074 lb/day	460 mg/L / 537 lb/day
Total Kjeldahl Nitrogen (TKN)	43 mg/L / 72 lb/day	31 mg/L / 36.4 lb/day
Oil & Grease	140 mg/L / 234 lb/day	100 mg/L / 118 lb/day
pH	5.5 to 9.0 standard units (s.u.)	5.5 to 9.0 s.u.

19. The industrial user permit included the following adjusted discharge limits once the Facility population reached 520 staff or 1357 inmates, which ever occurs first:

Parameter	Daily Maximum	7-Day Maximum Average
Flow	0.36 MGD	0.26 MGD
Chemical Oxygen Demand (COD)	1570 milligrams/Liter (mg/L) 4714 pounds/day (lb/day)	1120 mg/L/ 2430 lb/day
BOD ₅	560 mg/L / 1682 lb/day	400 mg/L / 868 lb/day
Chloride	6773 lb/day	N/A
TSS	644 mg/l / 1397 lb/day	460 mg/L / 998 lb/day
Ammonia as Nitrogen	43 mg/L / 223 lb/day	31 mg/L / 67 lb/day
TKN	74 mg/L / 223 lb/day	53 mg/L / 115 lb/day
Oil & Grease	140 mg/L / 420 lb/day	100 mg/L / 217 lb/day
pH	5.5 to 9.0 standard units (s.u.)	5-5 to 9.0 s.u.

20. When a POTW has developed specific prohibitions or limits, 40 C.F.R. § 403.5(d) states that such limits shall be deemed Pretreatment Standards for the purpose of section 307(d) of the Act, 33 U.S.C. § 1317(d).

VIOLATIONS

COUNTS 1 - 619

21. From June 1, 1999 to February 28, 2003, Respondent experienced 619 violations of its flow discharge limits identified in its industrial user permit. These violations are summarized in Attachment A.
22. Each violation of the flow limits described in Attachment A constitutes a violation of Respondent's industrial user permit and section 307(d) of the Act, 33 U.S.C. § 1317(d)

COUNTS 620 - 643

23. From June 1, 1999 to February 28, 2003, Respondent experienced twenty-four (24) violations of its COD limits identified in its industrial user permit. These violations are

summarized in Attachment B.

24. Each violation of the COD limits described in Attachment B constitutes a violation of Respondent's industrial user permit and section 307(d) of the Act, 33 U.S.C. § 1317(d).

COUNTS 644 - 1,453

25. From June 1, 1999 to February 28, 2003, Respondent experienced 810 violations of its BOD₅ limits identified in its industrial user permit. These violations are summarized in Attachment C.

26. Each violation of the BOD₅ limits described in Attachment C constitutes a violation of Respondent's industrial user permit and section 307(d) of the Act, 33 U.S.C. § 1317(d).

COUNTS 1,454 - 1,461

27. From June 1, 1999 to February 28, 2003, Respondent experienced eight (8) violations of its chloride limit identified in its industrial user permit. These violations are summarized in Attachment D.

28. Each violation of the chloride limit described in Attachment D constitutes a violation of Respondent's industrial user permit and section 307(d) of the Act, 33 U.S.C. § 1317(d).

COUNTS 1,462 - 2,177

29. From June 1, 1999 to February 28, 2003, Respondent experienced 716 violations of its TSS limits identified in its industrial user permit. These violations are summarized in Attachment E.

30. Each violation of the TSS limits described in Attachment E constitutes a violation of Respondent's industrial user permit and section 307(d) of the Act, 33 U.S.C. § 1317(d).

COUNTS 2,178 - 2,250

31. From June 1, 1999 to February 28, 2003, Respondent experienced seventy-three (73) violations of its TKN limits identified in its industrial user permit. These violations are summarized in Attachment F.

32. Each violation of the TKN limits described in Attachment F constitutes a violation of Respondent's industrial user permit and section 307(d) of the Act, 33 U.S.C. § 1317(d).

COUNTS 2,251 - 2,259

33. From June 1, 1999 to February 28, 2003, Respondent experienced nine (9) violations of its ammonia limits identified in its industrial user permit. These violations are summarized in Attachment G.

34. Each violation of the ammonia limits described in Attachment G constitutes a violation of Respondent's industrial user permit and section 307(d) of the Act, 33 U.S.C. § 1317(d).

COUNTS 2,260 - 2,281

35. From June 1, 1999 to February 28, 2003, Respondent experienced twenty-two (22) violations of its oil and grease limits identified in its industrial user permit. These violations are summarized in Attachment H.

36. Each violation of the oil and grease limits described in Attachment H constitutes a

violation of Respondent's industrial user permit and section 307(d) of the Act, 33 U.S.C. § 1317(d).

COUNTS 2,282 - 2,283

37. From June 1, 1999 to February 28, 2003, Respondent experienced two (2) violations of its pH limits identified in its industrial user permit. These violations are summarized in Attachment I.
38. Each violation of the pH limits described in Attachment I constitutes a violation of Respondent's industrial user permit and section 307(d) of the Act, 33 U.S.C. § 1317(d).
39. Respondent, by violating counts 1-2,283 as required by 40 C.F.R. §§ 403.5(b)(2) and 403.5(d), and section 307(d) of the Act, 33 U.S.C. § 1317(d), is therefore subject to this Order issued pursuant to section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

COUNTS 2,284 - 4,115

40. The City issued 1,857 Notices of Violation ("NOVs") from June 1, 1999 to May 1, 2002 for the violations detailed in Attachments A - I. Pursuant to Article V, Section 21-213(1) of the City of Sterling Code, each NOV required Respondent to submit a plan for the satisfactory permanent correction of the violation.
41. Respondent submitted three responses to the City addressing twenty-five (25) of the NOVs on January 11, 2000, March 20, 2000, and April 10, 2000. The responses indicated that Respondent was attempting to address the violations through the installation of a new pH meter and improved sample collection procedures.
42. Respondent failed to respond to 1,832 NOVs.
43. Each failure to respond to a NOV issued by the City constitutes a violation of

40 C.F.R. § 403.12(f) and section 307(d) of the Act, 33 U.S.C. § 1317(d).

COUNTS 4,116 - 5,039

44. Part I.B. of Respondent's industrial user permit requires that the Respondent monitor and continuously record pH readings on Respondent's pH meter. Further, Part II.A. of Respondent's industrial user permit establishes the sampling frequency of pH as continuous.
45. Respondent failed to continuously monitor and record pH from June 1, 1999 to August 26, 2002.
46. Each violation of the pH monitoring requirement constitutes a violation of Respondent's industrial user permit and section 307(d) of the Act, 33 U.S.C. § 1317(d).
47. Respondent, by failing to meet the sampling frequency requirements identified in its industrial user permit is in violation of the Pretreatment Standards as defined in section 307(d) of the Act, 33 U.S.C. § 1317(d), and is therefore subject to this Order issued pursuant to section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

ORDER

___Based upon the foregoing Violations and pursuant to the authority vested in the Administrator under the Act as delegated to the undersigned, it is hereby ORDERED THAT:

48. Upon receipt of this Order, Respondent shall immediately take all actions necessary to meet the requirements of the Act.
49. Upon receipt of this Order, Respondent shall immediately take all actions necessary to comply with Respondent's industrial user permit.

50. Within ten (10) days of receipt of this Order, Respondent shall give written notice to EPA and the City of Sterling of its intent to comply with the requirements of this Order.
51. Within thirty (30) days, of receipt of this Order, Respondent shall submit a proposal for an engineering study to determine the sources of BOD, TSS, oil and grease, and flow within the Facility that have contributed to exceedances of the effluent limits and to identify ways to mitigate these sources. At a minimum the study shall include:
 - A. Determination of the sources of BOD, TSS, oil and grease and flow from the Facility;
 - B. Characterization of the concentrations and variability of the identified waste streams;
 - C. Identification of ways to mitigate the identified sources, including but not limited to waste minimization, changes in policy or procedure, operational modifications, or capital improvements;
 - D. Projected daily maximum and 7-day maximum average for BOD, TSS, oil and grease and flow from the Facility for each mitigation measure identified above;
 - E. Costs and time line for implementing each mitigation measure identified above; and
 - F. Recommended mitigation measures, the costs and a proposed time line for implementing these measures.
52. EPA will review the completeness of the submission described in paragraph 51 and may:
 - (a) determine the submission is complete; or (b) determine that the submission is incomplete and direct Respondents to re-submit the document after incorporating EPA's comments.
53. Upon receipt of a notice that the submission is incomplete as described in paragraph 52 above, Respondent shall, within fifteen (15) days, or such longer time as specified by EPA in its notice, correct the deficiencies and resubmit the proposal. Respondent shall have the opportunity to object in writing to the notification that the submission is incomplete given pursuant to paragraph 52 within fifteen (15) days of receipt of such

notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent.

54. Within thirty (30) days of EPA's determination of completeness of the proposal, Respondent shall notify EPA in writing that it has retained an engineering firm to perform the engineering study. Notification shall include the name of the engineering firm, the contact person, and telephone number.
55. Within 120 days after retaining the engineering firm, Respondent shall submit a copy of the engineering study. This submittal shall include the proposed changes in policy, procedure, operational modifications, and/or capital improvements Respondent will implement to address the effluent violations, as well as the time line for implementing these changes.
56. EPA will review the submission described in paragraph 55 and may: (a) approve the plan and time line; (b) approve the plan and time line with modifications; or (c) disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's comments.
57. Upon receipt of a notice of disapproval or a request for a modification as described in paragraph 56 above, Respondent shall, within fifteen (15) days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the proposal. Respondent shall have the opportunity to object in writing to the notification of disapproval or request for modification given pursuant to

paragraph 56 within fifteen (15) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent.

58. Upon EPA approval, or approval with modification of the submission, the plan and its implementation schedule shall be incorporated into this Order.
59. Respondent shall submit a written notice of compliance or non-compliance within fourteen (14) days following each schedule date listed in paragraphs 51 through 56 of the Order. In the case of non-compliance, the notice shall include the cause for non-compliance and specify remedial actions being taken to comply.

OTHER PROVISIONS

60. EPA regulations protect confidential business information. 40 C.F.R. part 2, subpart B. If Respondent asserts a business confidentiality claim pursuant to these regulations for information required to be submitted under this Order, such information shall only be provided to EPA. If EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in the regulations. Unless a confidentiality claim is asserted at the time the information is submitted, the information shall be provided to both EPA and the City of Sterling as specified below, and EPA may make the information available to the public without further notice to you.

61. All written notices and reports required by this Order shall be sent to Darcy O'Connor, of EPA, with a copy to Bill Wright of the City of Sterling at the following addresses:

Darcy O'Connor (8ENF-T)
U.S. EPA Region VIII
Office of Enforcement, Compliance
and Environmental Justice
Technical Enforcement Program
999 18th Street, Suite 300
Denver, Colorado 80202-2466

Bill Wright
City of Sterling
P.O. Box 4000
Sterling, Colorado 80751

62. Any failure to comply with the requirements of this Order shall constitute a violation of said Order and may subject Respondent to penalties as provided under the Act, 33 U.S.C. § 1319.
63. This Order does not constitute a waiver or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief as it may deem appropriate under the Act. Be advised that 33 U.S.C. § 1319(d) authorizes the imposition of civil penalties of up to \$27,500 per day for each violation of the Act, while 33 U.S.C. § 1319(c) authorizes fines and imprisonment for willful or negligent violations of the Act.
64. Nothing in this Order shall be construed to preclude the institution of further action under section 309 of the Act for those violations cited herein or relieve Respondent from responsibilities, liabilities, or penalties established pursuant to any applicable Federal and/or State law or regulation.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION VIII
Complainant.

Date: 4/29/03_____

SIGNED_____
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

In the Matter of: State of Colorado Department of Corrections, Sterling Correctional Facility
Docket No.: **CWA-08-2003-0068**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Violation and Order for Compliance was sent to the following persons, in the manner specified, on the date below:

Original and One (1) Copy
Hand-carried and Filed:

Tina Artemis
Regional Hearing Clerk
U.S. EPA, Region VIII
999 18th Street, Suite 300
Denver, Colorado 80202-2466

True Copy by Certified Mail
"Return Receipt Requested"
with the attached document:

Mr. Joe Ortiz
Executive Director
Colorado Department of Corrections
2862 South Circle Drive
Colorado Springs, Colorado 80906-4195

Certificate of Service

Date: May 1, 2003

Judith M. McTernan

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE
REGIONAL HEARING CLERK.**

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON MAY 1, 2003.